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No. 82-740

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

SHEARN MOODY, JR.,
Petitioner,

v.

THARPE FORRESTER, COMMISSIONER OF INSURANCE OF THE STATE OF ALABAMA, AS RECEIVER FOR EMPIRE LIFE INSURANCE COMPANY OF AMERICA,

and

PROTECTIVE LIFE INSURANCE COMPANY,
Respondents.

JOINT BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

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QUESTION PRESENTED

In the circumstances of this case and under the decisions of this Court, did the Alabama trial court, presiding over the *quasi in rem* receivership proceeding, have the authority to prohibit petitioner from filing in federal court his proposed complaint?

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INTRODUCTION

The Petition before this Court is the ninth in a series of petitions for a writ of certiorari filed in this Court by Shearn Moody, Jr. arising out of the domiciliary and ancillary receivership proceedings in the courts of Alabama and Texas involving Empire Life Insurance Company of America ("Empire"). Petitioner ("Moody") was the chief executive officer of Empire, an insolvent Alabama insurance company. Respondents are Tharpe Forrester, who is the current Receiver of Empire, (the "Receiver") and Protective Life Insurance Company ("Protective"). This brief in opposition to Moody's ninth petition is filed jointly on behalf of the Empire Receiver and Protective.

Petitioner's efforts to nullify the liquidation of Empire and the reinsurance of Empire's policyholders by Protective have produced a never-ending stream of litigation. His efforts have been uniformly unsuccessful. This Court has, to date, denied each of Moody's eight petitions for writ of certiorari. Citations to the denials of writ of certiorari by this Court and some of the reported decisions in this protracted litigation are listed below:

Sumrall v. *Moody*, 620 F.2d 548 (5th Cir.), *on rehearing* 632 F.2d 1351 (5th Cir. 1980), *cert. denied*, 450 U.S. 1026 (1981).

Moody v. *State ex rel. Payne*, 355 So. 2d 1116 (Ala.), *cert. denied*, 439 U.S. 910 (1978).

Moody v. *State ex rel. Payne*, 351 So. 2d 552 (Ala. 1977), *cert. denied*, 435 U.S. 969 (1978),

Empire Life Ins. Co. of America v. *Moody*, 584 S.W.2d 855 (Tex. 1979).

Ex parte Moody, 434 U.S. 835 (1977) (*cert. denied*).

State ex rel. Payne v. *Empire Life Ins. Co.*, 351 So. 2d 538 (Ala. 1977), *cert. denied*, 435 U.S. 969 (1978).

Moody v. *State ex rel. Payne*, 344 So. 2d 160 (Ala.), *cert. denied*, 434 U.S. 996 (1977), *rehearing denied*, 434 U.S. 1089 (1978).

Moody v. *State ex rel. Payne*, 295 Ala. 299, 329 So. 2d 73 (1976).

Moody v. *State*, 539 S.W.2d 354 (Tex. Civ. App. 1976 writ ref'd n.r.e.), *cert. denied*, 434 U.S. 985 (1977).

Moody v. *Texas*, 538 S.W.2d 158 (Tex. Civ. App. 1976), *writ ref'd n.r.e.*), *cert. denied*, 434 U.S. 1068 (1978).

Moody v. *Moody Nat'l Bank*, 522 S.W.2d 710 (Tex. Civ. App. 1975, writ ref'd n.r.e.).

Moody v. *Crook*, 520 S.W.2d 958 (Tex. Civ. App. 1975).

Moody v. *State*, 520 S.W.2d 452 (Tex. Civ. App. 1975), *n.r.e)*

Moody v. *Jones*, 519 S.W.2d 536 (Tex. Civ. App. 1975).

Empire Life Insurance Co. v. *State*, 492 S.W.2d 366 (Tex. Civ. App. 1973).

Day v. *State*, 489 S.W.2d 368 (Tex. Civ. App. 1972).

STATEMENT OF THE CASE

1. **Background**—Petitioner Shearn Moody, Jr. is the former-president, chairman of the board of directors and principal stockholder of Empire Life Insurance Company of America. On June 29, 1972, Empire was found to be impaired and insolvent and placed in receivership by the Circuit Court of Jefferson County, Alabama,[1] the Honorable William C. Barber presiding.[2] Empire was adjudicated insolvent on the grounds that a major asset of Empire, an interest in the Libbie Shearn Moody trust ("the Trust"), had been overvalued by Empire. Though an appeal from this adjudication was expressly authorized by Alabama law, Moody did not appeal.

Following a lengthy trial in the receivership proceedings, in which Moody actively participated as a party, the Alabama receivership court determined Empire to be impaired in excess of ten million dollars and insolvent in excess of six million dollars, ordered Empire liquidated, and approved reinsurance of Empire's policyholders by Protective. On Moody's appeal from these adjudications, the Alabama Supreme Court

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[1] The States of Arkansas, Montana and Texas placed Empire in ancillary receiverships.

[2] Judge Barber has presided over the entire 10-year receivership proceeding.

unanimously affirmed the receivership court. *Moody* v. *State ex rel. Payne*, 344 So. 2d 160 (Ala.), *cert. denied, Shearn Moody, Jr.* v. *Charles H. Payne, etc.*, 434 U.S. 996 (1977).

2. **The Injunction**—Petitioner instigated a rash of litigation that interfered with and threatened to halt the receivership proceedings. At the Receiver's instance, the receivership court conducted an evidentiary hearing and entered an injunction prohibiting petitioner and others from instituting litigation interfering with the receivership without prior approval of the receivership court.[3] The evidence at the hearing included testimony by the Receiver that he had been subjected, both as Receiver and individually, to numerous law suits and proceedings filed by petitioner or his attorneys, all of which related to the Empire receivership and all of which were filed after the trial in the receivership court culminating in an order that Empire be liquidated and its policies reinsured by Protective. The Receiver testified that Moody's litigation substantially depleted the assets of the receivership estate and resulted in irreparable loss to the receivership by seriously interfering with implementation of the receivership court's orders.[4]

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[3] A thorough statement of the events leading up to the issuance of the injunction is found in the opinion of the Alabama Supreme Court affirming the injunction. *Moody* v. *State ex rel. Payne*, 295 Ala. 299, 302-04, 329 So. 2d 73, 75-77 (1976).

[4] The Empire Receiver also testified about a threat made by petitioner:

> [Shearn Moody] said to me, in words to this effect that Mr. Bookout, we are just getting started on you. "I intend to sue you personally. My actions will be of a personal nature against you to carry over after you have left the office [of Commissioner of Insurance]. ***we killed Crawford Martin and somebody else, ***he died with a heart attack the day after he signed his deposition, and we are beginning on you, and we are going to keep on if it takes us 50 years."

Moody v. *State ex rel. Payne*, 295 Ala. 299, 304, 329 So. 2d 73, 76 (1976).

Petitioner appealed the grant of the injunction to the Alabama Supreme Court, arguing that *Donovan* v. *City of Dallas*, 377 U.S. 408 (1964) [hereinafter cited as *Donovan*], precluded issuance of the injunction. The Supreme Court of Alabama upheld the injunction in *Moody* v. *State ex rel. Payne*, 295 Ala. 299, 329 So. 2d 73 (1976). *See also State ex rel. Payne* v. *Empire Life Ins. Co.*, 351 So. 2d 538 (Ala. 1977), *cert. denied*, 435 U.S. 969 (1978). Moody did not seek review in this Court of the Alabama Supreme Court's rejection of his *Donovan* claim.

3. **Events After The Inunction**—In outright defiance of the injunction against him, petitioner caused to be filed an amended complaint in *Allmon* v. *Bookout, et al.*, Civ. No. 74-377-N (U.S. Dist. Ct. M.D. Ala).[1] Petitioner was adjudicated in criminal and civil contempt by the receivership court. The findings of contempt were substantially affirmed by the Alabama Supreme Court, and this Court denied Moody's petitions for certiorari. *Moody* v. *State ex rel. Payne*, 355 So. 2d 1116 (Ala.), *cert. denied*, 439 U.S. 910 (1978); *State ex rel. Payne* v. *Empire Life Ins. Co.*, 351 So. 2d 538 (Ala. 1977), *cert. denied*, 435 U.S. 969 (1978).

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[1] The amended complaint in *Allmon* is substantially similar to the complaint Moody now seeks to file. *See* Order of Judge Barber, Pet. App. B, ¶ 1. Both allege the same factual basis, and both complaints allege a violation of 42 U.S.C. §§ 1983, 1985, based on alleged unlawful deprivations of property, due process of law, and equal protection of the law. The federal district court dismissed the *Allmon* complaint, saying

> Effectively what the Plaintiff would have this Court do would be to assert omnipotent power and to wrest conrol of the receivership estate from a State Court of competent jurisdiction, thereby materially disrupting if not destroying the orderly function and execution of the State Court and its procedures.

Moody v. *State ex rel. Payne*, 295 Ala. 299, 329 So. 2d 73 (1976) (quoting the unpublished opinion of the federal district court).

Because petitioner is a Texas resident, the Receiver and Protective filed suit in federal district court in Texas to enforce the money judgments arising out of the contempt proceedings. The Texas federal district court gave full faith and credit to the judgments. The Fifth Circuit Court of Appeals affirmed, expressly rejecting petitioner's argument that the Alabama courts had violated or misapplied *Donovan*. *Sumrall* v. *Moody*, 620 F.2d 548 (5th Cir.), *on rehearing* 632 F.2d 1351 (5th Cir. 1980), *cert. denied*, 450 U.S. 1026 (1981). This Court denied Moody's petition for writ of certiorari. *Id.*

On June 23, 1975, petitioner requested permission to file an amended counterclaim in a civil action then pending against him in the United States District Court for the Northern District of Texas. The receivership court granted permission, but the United States District Court thereafter denied petitioner leave to amend his counterclaim. *Meyers* v. *Moody*, C.A. Nos. 3-5678-D, 3-7625-D (N.D. Tex. 1975).

On May 9, 1976, petitioner requested permission of the receivership court to institute yet another suit in the United States District Court in Texas based upon the same claims asserted in the proposed amended counterclaim. Petitioner's attorneys abandoned this request, and it was subsequently denied.

On September 28, 1976, petitioner sought, and the receivership court denied, permission to file yet another action.[4] Again arguing that the receivership court's injunction violated *Donovan*, petitioner sought review in the Alabama Supreme Court. Adhering to its earlier holding that the receivership proceeding is a *quasi in rem* proceeding, the Alabama Supreme

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[4] The complaint that Moody proposed to file in 1976 is substantially similar to the complaint Moody now seeks to file. Order of Judge Barber, Pet. App. B, ¶ 1. Both complaints allege the same factual basis, and both complaints allege violation of the antitrust laws and the common law.

Court denied relief. *Moody* v. *State ex rel. Payne*, 351 So. 2d 552 (Ala. 1977), *cert. denied*, 435 U.S. 969 (1978). This Court denied Moody's petition for writ of certiorari. *Id.*

On October 29, 1981, petitioner again requested permission to institute litigation. Petitioner sought to sue the former Empire Receiver, the State of Texas, Protective, and others. The receivership court denied Moody's request. The receivership court reasoned that its ruling was governed by *Moody* v. *State ex rel. Payne*, 351 So. 2d 552 (Ala. 1977), *cert. denied*, 435 U.S. 969 (1978), in which the Alabama Supreme Court had applied *Donovan* in earlier Moody litigation. The receivership court "found that the proposed litigation did involve the Empire receivership proceeding and would interfere with, delay and seek to stop these proceedings. Therefore the court concluded that the court had ample authority to deny permission to sue." Answer of Judge Barber to Petition for Writ of Mandamus at ¶ 19. The court noted, *inter alia*, that the merits of petitioner's claims had been previously and finally adjudicated; that Moody had pursued a pattern of harassing and vexatious litigation inextricably involved with the receivership proceeding; and that petitioner had admitted under oath that he attempted to use the federal courts as a means to circumvent the receivership court's orders. Concluding that "a proper exercise of judicial discretion called for a denial of Moody's motion for permission to sue," the court denied the motion. *Id.* at ¶ 24.

Arguing that the denial of permission violated *Donovan*, Moody petitioned the Alabama Supreme Court for a writ of mandamus to compel the receivership court to grant permission to sue. The Alabama Supreme Court refused to grant the writ.[7] Moody now petitions this Court for review.[8]

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[7] Noting that the Alabama Supreme Court did not hear oral argument and that it issued a one-and-a-half page opinion, petitioner intimates that the Alabama Supreme Court failed to give serious consideration to his petition for writ of mandamus. (Pet. at 8) But peti-

ARGUMENT

1. Contrary To Petitioner's Argument, The Ruling Of The Alabama Courts Is Consistent With The Decisions Of This Court.

Time and again, this Court has been urged by petitioner to engage in piecemeal review of the voluminous record of the Empire receivership proceedings. The instant petition is, in substance, no different from Moody's previous unsuccessful efforts. Again, petitioner distorts the proceedings below by presenting incomplete fragments of the case. Petitioner ignores the full record below and strains mightily to secure review in this Court by glib and formalistic characterizations of the decisions below as embracing a new and different rule (Pet. at 9, 12), that effectively overrules this Court's decisions (Pet. at 11), and conflicts with several other federal decisions (Pet. 12-15), that presents a question of national importance (Pet. at 15), that deprives federal courts of jurisdiction (Pet. at 16, 17), and that is particularly invidious (Pet. at 18).

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tioner ignores the voluminous record. Under Alabama law, the Alabama Supreme Court takes judicial notice of the record of all former proceedings before it. *E.g., FDIC* v. *Equitable Life Assur. Soc. of U.S.*, 289 Ala. 192, 266 So. 2d 752 (1972); *Holz* v. *Lyles*, 287 Ala. 280, 251 So. 2d 583 (1971). In light of this judicial notice and the five reported *Moody* cases decided by the Alabama court, two of which specifically analyzed and rejected petitioner's *Donovan* argument in the context of this litigation, it is obvious that petitioner's suggestion that the Alabama Supreme Court acted capriciously is erroneous. Likewise frivolous is petitioner's suggestion that he was deprived of oral argument. (Pet. at 8). In fact the record shows no timely request for oral argument was made.

[1] We note that Moody's petition for writ of certiorari fails to comply with Rule 23(f) of the Rules of this Court in that it fails to demonstrate with specificity that each federal question sought to be reviewed was appropriately raised before both the receivership court and the Alabama Supreme Court.

Petitioner's desperate and distorted exaggerations are not supported by the record below. The decisions of the Alabama Courts are consonant with applicable decisions of this Court. There is no conflict with other federal decisions, and petitioner's reasons for granting the writ are without merit.

The main thrust of the petition for writ of certiorari is that the Alabama courts misapplied this Court's decision in *Donovan* v. *City of Dallas*, 377 U.S. 408 (1964).[9] Petitioner has advanced this argument on numerous other occasions concerning virtually identical facts. On three previous occasions, the Alabama Supreme Court rejected petitioner's argument; on two of those occasions, petitioner unsuccessfully sought review by this Court.[10] *See Moody* v. *State ex rel. Payne*, 351 So. 2d 552 (Ala. 1977), *cert. denied*, 435 U.S. 969 (1978); *Moody* v. *State ex rel. Payne*, 355 So. 2d 1116 (Ala.), *cert. denied*, 439 U.S. 910 (1978). On the other occasion, Moody acquiesced in the Alabama Supreme Court's rejection of his *Donovan* argument by failing to seek review in this Court. *Moody* v. *State ex rel. Payne*, 295 Ala. 299, 329 So. 2d 73 (1976).

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[9] The other United States Supreme Court case principally relied upon by Moody, *General Atomic Co.* v. *Felter*, 434 U.S. 12 (1977), merely reaffirmed the *Donovan* general rule as applied to strictly *in personam* litigation. *General Atomic* did not address the exclusive-jurisdiction exception to the *Donovan* rule and thus is not germane.

[10] Petitioner now asserts that, on the previous occasions he has urged that the application of the injunction violated the principles of *Donovan*, the *Donovan* issue was not clearly presented (Pet. at 4). As this Court's records reveal, however, this admission directly contradicts petitioner's previous representations to this Court. For instance, in his brief in No. 77-1109, petitioner set forth as the only question presented:

> Whether a state court is wholly without power, by virtue of the Supremacy Clause of the United States Constitution, to enjoin or to refuse to permit the filing of an *in personam* federal antitrust suit in a federal court on the ground that (a) a corporate

Moreover, petitioner has pressed his *Donovan* argument in the lower federal courts. The Fifth Circuit rejected petitioner's argument, and this Court denied review. *See Sumrall* v. *Moody*, 620 F.2d 548 (5th Cir.), *on rehearing*, 632 F.2d 1351 (5th Cir. 1980), *cert. denied*, 450 U.S. 1026 (1981). Apparently undaunted, petitioner again urges that the Alabama receivership court ignored or overruled *Donovan*.

But petitioner misconstrues the holdings of the Alabama courts. Suggesting that he was enjoined merely because his proposed litigation was harassing and vexatious, petitioner argues that the Alabama courts ignored *Donovan* and other decisions of this Court. This simply is not true. Rather, the Alabama receivership court once again faithfully observed the applicable standards recognized by this Court and the Alabama Supreme Court. The receivership court relied on the *quasi in rem* exception to the general rule discussed in *Donovan* and determined it had authority to restrain petitioner from instituting the proposed litigation. Then, the receivership court, based on its intimate knowledge of the full record of the Empire receivership proceedings, its review of the substance and purpose of Moody's proposed complaint, and Moody's track record of harassing litigation in the past, concluded that the authority to restrain petitioner should be exercised. The Alabama Supreme Court declined to grant mandamus.

There is no dispute that, absent special circumstances, state courts may not restrain litigants from proceeding in federal court. This Court has expressly recognized, however, that an ex-

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receivership proceeding pending in the state court is considered an *in rem* proceeding, and (b) the filing of the antitrust suit would allegedly interfere with, delay and eventually stop the state receivership proceeding.

Id. at 2 (*cert. denied* at 435 U.S. 969). *See, e.g.*, Petitioner's briefs in No. 78-110 (*cert. denied* at 439 U.S. 910); No. 80-1235 (*cert. denied* at 450 U.S. 1026).

ception to this general rule "has been made in cases where a court has custody of property, that is, proceedings *in rem* or *quasi in rem*. In such cases this Court has said that the state or federal court having custody of such property has exclusive jurisdiction to proceed." *Donovan* v. *Dallas, supra,* 377 U.S. at 412, *citing Princess Lida* v. *Thompson,* 305 U.S. 456, 465-468 (1939).

Applying the *in rem* exception in *Princess Lida* v. *Thompson,* 305 U.S. 456 (1939), this Court approved a state-court injunction prohibiting litigation from proceeding in federal court. This Court stated:

> [W]here the judgment sought is *strictly in personam,* both the state court and the federal court, having concurrent jurisdiction, may proceed with the litigation at least until judgment is obtained in one of them which may be set up as res judicata in the other. On the other hand, if the two suits are in rem, or quasi in rem, so that the court, or its officer, has possession or must have control of the property which is the subject of the litigation in order to proceed with the cause and grant the relief sought [then] the jurisdiction of one court must yield to that of the other. *We have said that the principle applicable to both federal and state courts that the court first assuming jurisdiction over property may maintain and exercise that jurisdiction to the exclusion of the other,* is not restricted to cases where property has been actually seized under judicial process before a second suit is instituted, but *applies as well where suits are brought to marshal assets, administer trusts, or liquidate estates, and in suits of a similar nature where, to give effect to its jurisdiction, the court must control the property. The doctrine is necessary to harmonious cooperation of federal and state tribunals.*

305 U.S. at 466. (footnotes omitted) (emphasis supplied). *Accord Kline* v. *Burke Construction Co.,* 260 U.S. 226, 229 (1922).

Time and again the Alabama and federal courts have held that the Empire receivership proceeding is *in rem* or *quasi in rem*. Petitioner seeks to avoid this settled authority by characterizing his proposed complaint as seeking only money damages and as not naming the current Receiver as a party.[11] Thus, petitioner alleges that his proposed action is *in personam* and cannot be enjoined. But the basis of the *quasi in rem* receivership proceeding is the insolvency of Empire, which rests on the valuation of the Trust. By his proposed action petitioner seeks to relitigate the value of the Trust and the propriety of placing Empire in receivership. *See* Pet. App. C. If it be assumed, *arguendo*, that Moody succeeds in collaterally attacking the receivership court's most fundamental rulings, the jurisdiction of the receivership court would be impaired if not destroyed. Nothing could be more destructive of the receivership court's jurisdiction over the receivership of Empire than another court's determination that the Trust was improperly valued and thus that Empire was wrongfully placed in receivership. Moreover, by his proposed action, petitioner seeks to recover for damage to Empire. To that extent the proposed action is derivative. *See supra*, note 11. It is difficult to conceive of a more destructive assault on the receivership court's jurisdic-

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[11] Though petitioner's proposed complaint does not name the current Receiver as a defendant, petitioner seeks to recover for alleged damage to Empire resulting from alleged antitrust violations. *See* Pet. App. C, ¶ 51. Since the alleged damage was to the corporate entity, it appears petitioner's claim is derivative. To maintain a shareholder derivative action, petitioner must allege and prove bad faith on the part of the directors of the corporation for failure to sue in the corporate name. *E.g.*, *Ash* v. *IBM*, 353 F.2d 491, 493 (3rd Cir. 1965), *cert. denied*, 384 U.S. 927 (1966). Of course, the directors of Empire have been replaced by the Receiver; thus, to maintain his proposed action, petitioner must allege and prove that the Receiver acted in bad faith by failing to bring suit for the alleged antitrust violations. *See generally* II P. Areeda & D. Turner, Antitrust Law § 336e (1978). Such litigation would surely disrupt the receivership proceeding.

tion than collateral attacks on actions by the current and former Receivers—actions taken under the authority of the ongoing receivership proceeding. As this Court has said, "where the jurisdiction of the state court has first attached, the federal court is precluded from exercising its jurisdiction over the same *res* to defeat or impair the state court's jurisdiction." *Kline* v. *Burke Construction Co., supra,* 260 U.S. at 229.

2. The Ruling Below Does Not Conflict With The Decisions Of The Lower Federal Courts.

Petitioner cites three opinion of federal courts, asserting that these decisions conflict with the holding below. *Central States, Southeast & Southwest Areas Health and Welfare Fund* v. *Old Security Life Ins. Co.,* 600 F.2d 671 (7th Cir. 1979); *Slotkin* v. *Brookdale Hospital Center,* 357 F. Supp. 705 (S.D.N.Y. 1972); *Mills* v. *Roanoke Ind. Loan & Thrift,* 70 F.R.D. 448 (W.D. Va. 1975). In each of these cases, federal plaintiffs sued the entity in receivership (or liquidation) for acts done by the entity before it was placed in receivership. In none of the cases did the plaintiff challenge the basis on which the entity had been placed in receivership or the actions of the receiver. In none of the cases did the plaintiff seek to relitigate the issue upon which the court's jurisdiction over the insolvent entity was based. In none of the cases would a judgment for plaintiff have rendered a nullity the actions of the receivership court. None of the cases cited by petitioner is in conflict with the ruling below.

3. Petitioner's Other Arguments Have No Merit.

In a strained attempt to cast this case as one of national importance, petitioner points out that 33 states have statutes expressly providing for injunctions in insurance receivership or liquidation cases. Even without statutory authorization, a court of equity has the power to restrain litigation that threatens to destroy its jurisdiction over a res. *See, e.g., Princess Lida* v. *Thompson,* 305 U.S. 456 (1939). Thus, it is of no significance

that 33 states have enacted statutes authorizing injunctions. Moreover, because of the unique circumstances of this case, including a 10-year battle by petitioner through harassing litigation to stop the receivership proceeding, the instant case is of virtually no precedential use for others seeking or opposing injunctions in the receivership context.

Petitioner also urges that, because he may not file the proposed complaint in federal court, the Article III power of the federal courts has been somehow abridged. Petitioner's argument has no merit, for this Court has specifically upheld a state-court injunction prohibiting litigants from proceeding in federal court. Clearly, in *Princess Lida* v. *Thompson*, 305 U.S. 456 (1939), this Court denied the federal district court the power to decide its own jurisdiction. There was no infringement of the Article III power of the federal courts in *Princess Lida*, and there is no such infringement here. Unless this Court is to overrule its prior decisions, petitioner's argument is without merit.

Finally, petitioner argues that the state-court injunction denies him his first amendment right to petition the federal courts for redress of grievances. But petitioner again fails to recognize that this Court has specifically upheld a state court injunction prohibiting a litigant from petitioning a federal court for redress of grievances. Clearly, in *Princess Lida* v. *Thompson*, 305 U.S. 456 (1939), this Court denied the litigant from petitioning a federal court for redress of grievances. There was no infringement of first amendment rights in *Princess Lida*, and there is no such infringement here. Unless this Court is to overrule its prior decisions, petitioner's argument is without merit.

CONCLUSION

Based on the foregoing authorities and analysis, the petition is due to be denied.

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